

Judith Sargentini

Sent by email:

judith.sargentini@europarl.europa.eu

Brussels, 28 October 2016

Subject: Revision of the Fourth Anti-Money Laundering Directive

Dear Ms Sargentini,

We are pleased to provide you with our comments on the Commission Proposal for a revision of Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4th AMLD).

The recent terrorist attacks and the Panama Papers show that the integrity of our financial system cannot be taken for granted. Further work is therefore necessary to ensure that services provided to support the economy are not abused by criminals. We welcome the Commission proposal for the revision of the 4th AMLD as a step in this direction.

We look forward to see the European Parliament's contribution to the Commission proposal. In the meantime, we would like to share some input from practice with you.

(1) Closing the loopholes

We strongly suggest to replace the use of 'tax advisors' by 'service providers offering tax advice' in Article 2 of the 4th AMLD, as well as all following relevant articles.

This is to ensure that all professionals providing similar services are treated equally under the AML framework, irrespective of whether they are accountancy professionals or not. In fact, recital 9 of the 4th AMLD already recognises the need to go beyond covering only tax advisors when it states that "*Legal professionals [...] should be subject to this Directive when [...] providing tax advice*".

In several Member States, service providers outside the accountancy, audit, and tax profession can also provide tax advice and consumers are free to choose whose services they would like make use of¹. Currently, there is therefore doubt as to whether the requirements of the 4th AMLD apply to these service providers offering tax advice.

This loophole could be abused by those seeking to launder their illicit money. In this regard it is important to point out that tax work is one of the ways that accountants can identify money laundering.² This highlights the importance of getting the right scope for the application of the 4th AMLD.

¹ For more information, please see: FEE, "Provision of Accountancy, Audit and Related Services in Europe: A Survey on Market Access Rules", available at: http://www.fee.be/images/publications/qualification/Provision_of_Accountancy_Audit_and_Related_Services_in_Europe_05121912200571241.pdf

² See for example: CCAB, "Coming out in the Wash: Views on the UK's Anti-Money Laundering Regime" (2014). Available at: <http://www.ccab.org.uk/documents/AMLFinalReport.pdf>

(2) Transposition deadline

Article 1 (23) (24) of the Commission proposal moves forward the transposition deadline of the 4th AMLD from 26 June 2017 to 1 January 2017.

Feedback from our members across Europe shows that the implementation process is at very different stages across countries: Some countries have already published draft law whereas in others the preparatory work appears to be at a very early stage. Considering the importance of an inclusive and qualitative law-making process, as well as a consistent implementation across the EU, it might be better to have a transposition deadline after January 2017.

(3) Interconnection of Beneficial Ownership registers with third countries

We would like to reiterate our support for the interconnection of the Beneficial Ownership (BO) registers.

Money-laundering and terrorist financing operations are not limited to the borders of the European Union. We are therefore also in favour of interconnecting EU BO registers with those of third countries that would like to work together in combating money laundering and terrorist financing.

(4) Accessing BO registers from other Member States

It is important that the interconnection of BO registers allows obliged entities (OEs) to access BO information from other Member States in a way that is comprehensible to them.

Article 1 (9) (10) of the Commission Proposal for the revision of the 4th AMLD foresees the interconnection of the BO registers via the European Central Platform, as established by Directive 2009/101/EC. However, according to Article 4 of that Directive, Member States must only disclose documents and particulars in “languages permitted by the language rules applicable in the Member State”. They can also voluntarily disclose such information in other official EU languages.

We understand that translating the BO information in the national registers in all EU languages could be costly. However, if the BO information will not be translated, then it is important that the data is standardised in a way that the OE can understand the BO information held by the register of another Member State.

(5) Quality of and access to customer due diligence data

The reliability of the BO registers will depend on whether the information contained therein is accurate and up to date.

The FATF plenary meeting on 22–24 June 2016³ pointed out that information that companies keep on their shareholders or members is often not verified, accurate, or up-to-date. Companies are also often not sanctioned for this lack of compliance. In September 2016, the FATF Report to the G20 on Beneficial Ownership reiterated these observations.⁴

³ FATF, “Outcomes of the Plenary meeting of the FATF, Busan Korea, 22–24 June 2016”, available at: <http://www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-outcomes-june-2016.html>

⁴ FATF, “FATF Report to the G20 on Beneficial Ownership”, September 2016, available at: <http://www.fatf-gafi.org/publications/mutualevaluations/documents/report-g20-beneficial-ownership-2016.html> s

It would be counterproductive for customer due diligence (CDD) activities if a similar situation were to develop for the implementation of the BO registers. The value of transparency is inevitably compromised if no certainty can be placed on the reliability of the information.

Furthermore, governments could do more to facilitate affordable and, where possible, free access to accurate and up-to-date information regarding BO, politically exposed persons (PEPs), or sanctioned persons.

(6) Translation

It appears that the translation of the 4th AMLD has interpretation issues in certain countries.⁵ It is therefore important that the revised 4th AMLD is adequately translated and takes into account the specificities of national criminal systems. This is crucial for a consistent implementation of the AML Directive.

For further information on this letter, please contact Ms Petra Weymüller (email: petra.weymuller@fee.be, Tel.: +32 (0)2 285 40 75).

Kind regards,

On behalf of the Federation of European Accountants,



Petr Kriz
President



Olivier Boutellis-Taft
Chief Executive

About the Federation of European Accountants

The Federation of European Accountants represents 50 professional institutes of accountants and auditors from 37 European countries, with a combined membership of almost 1 million professional accountants working in different capacities. As the voice of the European profession, the Federation recognises the public interest.

The Federation is in the EU Transparency Register (No 4713568401-18).

⁵ For example, “dirty money” and “illicit money” have a different meaning in the Italian criminal code, but this is not properly taken into account in the translation of the 4th AML Directive. See also: Lucia Starola, “Emendamenti del Parlamento UE alla proposta di IV direttiva antiriciclaggio”, *Corriere tributario* n. 20/2014, page 1590.